

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

LINDA GRAYSON

Plaintiff,

v.

**LEXINGTON INSURANCE
COMPANY**

Defendant.

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CIVIL ACTION NO. _____

DEFENDANT LEXINGTON INSURANCE COMPANY'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant, LEXINGTON INSURANCE COMPANY ("Lexington") files its Notice of Removal to the United States District Court for the Southern District of Texas, Galveston Division, on the basis of diversity of citizenship and amount in controversy, and respectfully shows the following.

**I.
Factual Background**

1. On April 23, 2015, Plaintiff Linda Grayson ("Plaintiff") filed her lawsuit in Galveston County, Texas, seeking a declaratory judgment to enforce the appraisal provision within an insurance contract between Plaintiff and defendant Lexington.

2. Plaintiff served Lexington, through the Texas Department of Insurance, with a copy of the Petition on or about May 6, 2015.

3. Defendant Lexington files this notice of removal within 30 days of receiving Plaintiffs' Original Petition. *See* 28 U.S.C. §1446(b). This Notice of Removal is being filed within one year of the commencement of this action. *See id.*

4. All pleadings, process, orders, and other filings in the state court action are attached to this Notice as required by 28 U.S.C. § 1446(a). All such documents are fully

incorporated herein by reference and as if fully set forth herein. *See* Index of Matters Being Filed, ¶ 3. Attached hereto as Exhibit “A” is a copy of the Docket Sheet. A copy of Plaintiff’s Original Petition is attached as Exhibit “B.” The Citation by Certified Mail is attached as Exhibit “C”. Defendant Lexington’s Original Answer to Plaintiffs’ Original Petition is attached as Exhibit “D”. The List of Parties and Counsel is attached as Exhibit “E”. A copy of this Notice is also concurrently being filed with the state court and served upon the Plaintiff.

5. Venue is proper in this Court under 28 U.S.C. § 1441(a) because this district and division embrace Galveston County, Texas, the place where the removed action has been pending.

II. **Basis for Removal**

6. Removal is proper because there is complete diversity between the parties. 28 U.S.C. §1332(a), 1441(a) and 1446. Plaintiff is a citizen of Missouri. Defendant is incorporated under the laws of the State of Delaware, with its principal place of business in Boston, Massachusetts.

7. The amount in controversy exceeds \$75,000, excluding interests and costs. U.S.C. §1332(a); *Andrews v. E.I. du Pont de Nemours & Co.*, 447 F.3d 510, 514-15 (7th Cir. 2006). The Court may consider policy limits, penalties, statutory damages, and punitive damages in its analysis of the amount in controversy. *St. Paul Reinsurance Co. Ltd. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see Ray v. State Farm Lloyds*, 1999 WL 151667, at *2-3 (N.D. Tex. 1999) (finding sufficient amount in controversy in plaintiff’s case against the insurer for breach of contract, bad faith, violations of the Texas Insurance Code and Texas Deceptive Trade Practices Act and mental anguish); *Fairmont Travel, Inc. v. George S. May Int’l Co.*, 75 F.Supp.2d 666, 668 (S.D. Tex 1999) (considering DTPA claims and the potential recovery of punitive damages as part of the

amount in controversy). Without specifically alleging a monetary damage, Plaintiff seeks to enforce the appraisal provision of the insurance contract between Plaintiff and Lexington, along with attorneys' fees. The contract between Plaintiff and Lexington, effective October 17, 2008 through October 17, 2009, contained the following limits: Coverage A Limits of \$370,000, Coverage B Limits of \$37,000, Coverage C limits of \$185,000, and Coverage D Limits of \$74,000, for the Loss Location at 21912 Kennedy, Galveston, Texas, the property giving rise to the present dispute. *See* Declaration of Jennifer M. Kearns attached hereto.

8. Copies of all pleadings, process, orders, and other filings in the state-court suit are attached to this notice as required by 28 U.S.C. §1446(a).

9. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the suit has been pending is located in this district.

10. Defendant will promptly file a copy of this Notice of Removal with the clerk of the state court where the suit has been pending.

III. **Conclusion**

Based upon the foregoing, the exhibits submitted in support of this removal, and other documents filed contemporaneously with this Notice of Removal, Scottsdale hereby removes this case to this Court for trial and determination.

Respectfully submitted,

By: /s/ Jennifer M. Kearns

Jennifer M. Kearns

State Bar No. 24049865

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**ATTORNEY FOR DEFENDANT
LEXINGTON INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 2015, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties in accordance with the Federal Rules of Civil Procedure:

Craig Eiland

CEiland@eilandlaw.com

The Law Offices of A. Craig Eiland, PC

2211 The Strand, Suite 201

Galveston, Texas 77550

713-513-5211 (Fax)

/s/ Jennifer M. Kearns

Jennifer M. Kearns

DECLARATION OF JENNIFER M. KEARNS

STATE OF TEXAS

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COUNTY OF TRAVIS

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I, Jennifer M. Kearns, as authorized by 28 U.S.C. §1746, do declare under penalty of perjury:

1. I have personal knowledge of all matters stated herein, and if called upon to do so, could and would testify competently thereto.
2. I am an Attorney of Record for Defendant Lexington Insurance Company.
3. Lexington Insurance Company issued policy number LE 7893894 02 to Linda Grayson, for the insured premises located at 21912 Kennedy, Galveston, Texas 77554, effective October 17, 2008 through October 17, 2009. The limits provided by this policy are:

Coverage A	-	Dwelling	\$370,000.00
Coverage B	-	Other Structures	\$ 37,000.00
Coverage C	-	Personal Property	\$185,000.00
Coverage D	-	Loss of Use	\$ 74,000.00

4. I hereby certify that I have read the foregoing Notice of Removal and that the statements contained therein are within my knowledge and true and correct.


Jennifer M. Kearns

SUBSCRIBED AND SWORN TO BEFORE ME by Jennifer M. Kearns on this, the 20th day of May, 2015, to certify which witness my hand and official seal.


Notary Public, State of Texas

